DEC 8 1999

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No. 98-1993

Supreme Court, U.S.
FILED
DEC 8 1999
CLERK

In The
Supreme Court of the United States

THE STATE OF FLORIDA,
Petitioner,

vs.

J.L., A JUVENILE,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., AND THE NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF THE PETITIONER.

(List of Counsel on Inside Front Cover)

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Of Counsel:

GENE VOEGTLIN, ESQ.
International Association of
Chiefs of Police, Inc.
515 North Washington St.
Alexandria, Virginia 22312

RICHARD WEINTRAUB, ESQ.
National Sheriffs' Association
1450 Duke Street
Alexandria, Virginia 22314

BERNARD J. FARBER, ESQ.
1126 West Wolfram
Chicago, Illinois 60657-4330

Counsel For Amici Curiae:

WAYNE W. SCHMIDT, ESQ.
Executive Director
Americans for Effective
Law Enforcement, Inc.
5519 N. Cumberland Ave.
Suite 1008
Chicago, Illinois 60656
E-mail: AELE@aol.com

JAMES P. MANAK, ESQ.
Counsel of Record
421 Ridgewood Avenue
Suite 100
Glen Ellyn, Illinois 60137-4900
Tele/Fax (630) 858-6392
E-mail: lelp@xnet.com

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BRIEF OF *AMICI CURIAE*

This brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondent. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.[1]

INTEREST OF *AMICI CURIAE*

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various state and federal constitutions.

AELE has previously appeared as *amicus curiae* over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

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[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This brief was authored for the *amici* by James P. Manak, Esq., counsel of record, and Wayne W. Schmidt, Esq., Executive Director of Americans for Effective Law Enforcement, Inc. No other persons authored this brief. Americans for Effective Law Enforcement, Inc., made the complete monetary contribution to the preparation and submission of this brief, without financial support from any source, directly or indirectly.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world. Founded in 1893, the IACP, with more than 17,000 members in 112 countries, is the world's oldest and largest association of police executives. IACP's mission, throughout the history of the association, has been to identify, address, and provide solutions to urgent law enforcement issues.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

Amici are national professional associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of overseeing the process of investigative stops of individuals based upon reasonable suspicion within the bounds of the law; and (2) police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters, including the formulation and implementation of policy on the subject.

Because of the relationship with our members, and

the composition of our membership and directors–including active law enforcement administrators and counsel–we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

STATEMENT OF THE CASE

The Florida Supreme Court, *J.L., a juvenile v. State of Florida*, 727 So.2d 204 (Fla. 1998), against the overwhelming authority of state and federal case law in the United States, ruled that an anonymous tip that a youth wearing a plaid shirt and standing with other young black males at a particular location was carrying a gun, was insufficient to provide reasonable suspicion under *Terry v. Ohio*, 392 U.S. 1 (1968), in view of the tip's failure either to allege a suspicious activity that the police could verify or to accurately predict future behavior of the subject. It approved suppression of a handgun found on the juvenile in a classic stop and frisk confrontation, in spite of the fact that an officer with more than fourteen years of experience who had arrived on the scene within six minutes of the anonymous tip had verified all the details of the tip.

SUMMARY OF ARGUMENT

Based on our experience as law enforcement practitioners and administrators at the state and national levels, *amici* believe that the better-reasoned view is that the facts possessed by the officer in this case constituted reasonable suspicion under *Terry v. Ohio* for an

investigative stop and frisk of the juvenile. We state directly that we are not asking for an exception to *Terry v. Ohio*. We believe that the facts of this case fall squarely within the rule of *Terry v. Ohio, i.e.*, that the officer had abundant reasonable suspicion for her stop and frisk of the juvenile. This is part and parcel of the *Terry* holding, not an exception to it, and no stranger to recognition by the overwhelming majority of courts in the United States. These courts and *amici* recognize that a requirement of further investigative activity imposed on an officer in this type of situation is, in many cases, likely to be a bullet aimed at the officer or an otherwise violent confrontation that could have been avoided by common sense police work. The safety of our officers and citizens compels us to speak.

As this Court is aware, *amici* are not strangers to stop and frisk issues. AELE originally filed an *amicus curiae* brief in *Terry v. Ohio*, 392 U.S. 1 (1968), arguing for a common sense approach to police investigation of suspicious circumstances. Joined by other law enforcement organizations, we now submit that the time is ripe for this Court to apply *Terry* to one of the most common events in law enforcement practice today, anonymous tips concerning armed persons.

Our position grows out of a concern that the ruling of the court below–if affirmed–would leave officers defenseless in the face of such tips, even when verified to the extensive degree as found in this case. Refusal of this Court to recognize a reasonable, common sense application of *Terry* to the type of activity involved in this case would only worsen this condition, as well as leaving our communities unprotected as officers may opt

to avoid potentially violent confrontations.

We ask this Court to apply *Terry*, which *amicus* AELE supported by pointing out the common law origin of police investigative powers, and hold that the officer's conduct in this case was proper. **The ruling we seek is not an exception or extension of the rule of *Terry*, but what we submit is required by its holding.**

ARGUMENT

AN ANONYMOUS TIP STATING THAT A PERSON IS CARRYING A CONCEALED FIREARM AT A SPECIFIC LOCATION, CONTAINING A DETAILED DESCRIPTION OF THE PERSON AND HIS ATTIRE, IS SUFFICIENTLY RELIABLE TO JUSTIFY AN INVESTIGATORY DETENTION AND FRISK FOR WEAPONS IF THE POLICE IMMEDIATELY VERIFY THE ACCURACY OF THE TIP.

The police in this case received an anonymous tip that one of three young African-American males standing at a bus stop in front of a pawnshop at a specific and public location was carrying a concealed firearm. The tipster described the appearance of each of the young males and said that the individual with the gun was wearing a "plaid-looking" shirt.

Two officers responded within six minutes after receiving the tip. They immediately verified the accuracy of all of the appearance and location information provided by the tipster. J.L., a juvenile, was standing by

the bus stop with two other young African-American males and he was wearing a plaid shirt. Officer Carmen Anderson, a fourteen-year veteran of police work, approached J.L., asked him to put his hands above his head, and conducted a pat down of his outer garments. She then seized a gun that she saw protruding from the juvenile's left pocket. The juvenile was taken into custody and charged with unlawfully carrying a concealed firearm and possession of a firearm by a minor under eighteen years of age.

The Supreme Court of Florida ruled that the officer lacked reasonable suspicion for her conduct under *Terry v. Ohio*. A vigorous dissent was filed by Justice Overton, joined by Justice Wells.

The majority rule in the United States, which was rejected by the court below, is to the effect that when the police receive an anonymous tip alleging that a person is carrying a **concealed weapon** and only the innocent details of the tip are verifiable, the police may conduct an investigatory stop and frisk of the suspect.

Amici will not repeat the over twenty cases from state and federal courts affirming the rule. Only two cases in the United States appear to disagree–again, as cited in the parties' briefs–and these cases appear to be grounded in state (Pennsylvania and Massachusetts) constitutional provisions.

Thus, the State of Florida is in the mainstream of precedent in arguing for its position in this case. *Amici* add that the reality of police work involved in this case is often death or injury for the officers. As noted by the

dissenting opinion of Justice Overton:

> [We are] unable to ignore the daily headlines of our nation's newspapers and the statistics compiled by law enforcement agencies that reveal the great risk of harm posed by firearms in this country. According to the Uniform Crime Reports published by the Federal Bureau of Investigation, firearms claimed the lives of 92% of the 696 law enforcement officers killed in the line of duty from 1987 through 1996. Of those murders committed with firearms, 71% involved handguns–weapons that are easily concealed. Recent events have tragically demonstrated that children, such as the petitioner, and guns are an especially explosive mixture. The violence involving firearms at our nation's schools is a problem of major significance. Unfortunately, the majority has virtually ignored the great harm caused by firearms and has lost sight of the fact that the rationale of *Terry v. Ohio*, 392 U.S. 1 (1968), is to protect law enforcement officers and the general public from the dangers associated with armed suspects. It has also lost sight of a common sense definition of the term "unreasonable."

J.L., 727 So.2d at 211, footnotes omitted.

The prescription offered by the court below for the type of scenario faced by officer Anderson and her partner was simple: the police officers should have used a less intrusive means, such as a consensual encounter, to determine if the suspect was armed and dangerous

before a frisk would have been justified. It suggested a more reasonable approach would be to wait until some observable suspicious conduct took place in order to justify the frisk. It said that to approve the instant stop and frisk would create a "firearm exception" to *Terry*, by requiring less than reasonable suspicion for a *Terry* stop in response to an anonymous tip which alleged that an individual is carrying a firearm. It rejected this so-called "firearm exception" because it was unwilling to carve out a new exception from the original common law rule recognized in *Terry*.

Amici submit that the concept of a "firearm *exception*" to *Terry* is at the heart of the Florida court's faulty reasoning and conclusion. This Court has already made it clear that if an officer has a reasonable suspicion that a detained individual is armed and dangerous to the officer or others, a limited frisk for weapons may be conducted. *Terry*; *Minnesota v. Dickerson*, 508 U.S. 366 (1993). It has made it abundantly clear that such a stop and frisk is a "*limited* intrusion." *Adams v. Williams*, 407 U.S. 143, 148 (1972) (emphasis added).

Established precedents of this Court have also made it clear that under appropriate circumstances, an anonymous tip may carry sufficient indicia of reliability to justify an investigatory stop and frisk. *Alabama v. White*, 496 U.S. 325, 328 (1990). Under this Court's jurisprudence an anonymous tip's reliability is based in part on the specificity of the information provided and the ability of police officers to quickly and independently corroborate significant details of the tip. *White*, 496 U.S. at 331-32. The corroboration of only the innocent details of an anonymous tip concerning certain illegal activities,

such as the sale or possession of drugs, might be considered insufficient to provide police officers with a reasonable suspicion of criminal activity, but where the immediate safety of officers and the public from firearms is concerned, the reasonable suspicion equation turns out differently, as recognized by the overwhelming majority of courts that have considered the issue.

The use of the term, "firearm exception," to *Terry v. Ohio* is a diversion and an exercise in semantics that ignores the practical realities of police work that *Terry* was designed to deal with. It ignores what Professor LaFave succinctly refers to as the compelling realities of police work.

> It must be recognized that stoppings for investigation are not all of one kind and that in some instances the need for immediate action may be so great that substantial doubts about the reliability of the informant or his information cannot be permitted to stand in the way of prompt police action.

4 LAFAVE, SEARCH AND SEIZURE § 9.4(h), (3d ed. 1996) at 229.

Thus, while an officer possessing an anonymous tip about a drug transaction may be required to wait for additional corroborative facts to fall into place, officers in the position of officer Anderson have little room to maneuver. She knew that the anonymous tip concerning a juvenile with an illegally concealed firearm presented her with a unique situation. She knew that it was unlikely that she could verify more than the innocent details of the tip without substantially risking her safety or the safety of the other officer and the general public. She

knew her window of opportunity for action was small and closing quickly. She acted, and it would be surprising if one member of the law-abiding public out of a thousand would think her conduct anything other than simply doing her duty.

Equally importantly, the majority of courts in the United States would agree, finding that she had sufficient reasonable suspicion under *Terry v. Ohio*. As noted by the court in *United States v. Bold*, 19 F.3d 99 (2nd Cir. 1994):

> "The unique dangers presented to law officers and law-abiding citizens by firearms are well chronicled." [*United States v. Clipper*, 973 F.2d 944, 949-51 (D.C. Cir. 1992)]. An officer who is able to corroborate other information in an anonymous tip that another person is in actual possession of a gun is faced with an "unappealing choice." *United States v. McClinnhan*, 660 F.2d 500, 502 (D.C. Cir. 1981). He must either stop and search the individual, or wait until the individual brandishes or uses the gun. *Id.* At 502-503.

Bold, 19 F.3d at 104.

One might add to this the admonition of this Court in *Terry v. Ohio*:

> *The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent [person] in the circumstances would be warranted in the belief that his safety or that of others was in danger.*

Terry, 392 U.S. at 27 (emphasis added).

Amici submit that behind the rhetoric of the court below and its choice of terms implying an "exception" to *Terry v. Ohio* is the reality of (1) officer safety, (2) public safety, and (3) the precedents of this Court and others. From *Terry* to the most recent case law, this Court and others have recognized the common law right of officers to protect themselves and others from dangerous persons.

The standard of reasonable suspicion imposed upon police officers by *Terry* is a small price to pay for balancing individual interests in a free society against the public interest under the Fourth Amendment. The standard was met in this case. To argue otherwise ignores the common sense basis of *Terry* and the realities of everyday police work. A contrary holding would alter the landscape of police investigative activity involving dangerous weapons in a manner that a free society would quickly reject as an abdication of duty by its sworn police officers.

CONCLUSION

Amici urge this Court to reverse the decision of the court below on the basis of the precedents of this Court and sound judicial policy.

Respectfully submitted,

Of Counsel:

GENE VOEGTLIN, ESQ.
International Association of Chiefs of Police, Inc.
515 North Washington St.
Alexandria, Virginia 22312

RICHARD WEINTRAUB, ESQ.
National Sheriffs' Association
1450 Duke Street
Alexandria, Virginia 22314

BERNARD J. FARBER, ESQ.
1126 West Wolfram
Chicago, Illinois 60657-4330

Counsel for Amici Curiae:

WAYNE W. SCHMIDT, ESQ.
Executive Director
Americans for Effective Law Enforcement, Inc.
5519 N. Cumberland Ave.
Suite 1008
Chicago, Illinois 60656
E-mail: AELE@aol.com

JAMES P. MANAK, ESQ.
Counsel of Record
421 Ridgewood Avenue
Suite 100
Glen Ellyn, Illinois 60137-4900
Tele/Fax (630) 858-6392
E-mail: lelp@xnet.com

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